

Document # 5400

5/9/91

#5400

ADOPTED

5/9/91

MEMORANDUM OF UNDERSTANDING REGARDING
THE MAINTENANCE OF COPLEY SQUARE

I. Background and Objectives

This Memorandum of Understanding (the "Agreement") entered into as of the 1st day of July, 1991, by and between the Copley Square Centennial Committee, Inc., a Massachusetts non-profit corporation ("CSCC"), and the City of Boston acting through its Parks and Recreation Department (the "Parks Department"), and its Public Works Department (the "Public Works Department"), and the Boston Redevelopment Authority, a Massachusetts public body politic and corporate ("BRA"), hereinafter collectively referred to as the "Parties."

WHEREAS, the reconstruction of Copley Square (the "Square"), being a public park in the City of Boston bounded by Boylston Street, Clarendon Street, Dartmouth Street, and St. James Avenue, exclusive of that portion of land owned and occupied by Trinity Church, has been planned and carried out as a joint effort by the public and private sector; and

WHEREAS, many in both the public and private sector have helped fund said reconstruction, including the City of Boston which has contributed \$1,500,000; the CSCC which has contributed \$2,100,000; the City of Boston Edward Ingersoll Browne Fund which has contributed \$300,000; and the Commonwealth of Massachusetts which has contributed \$2,000,000; and

WHEREAS, the reconstructed Copley Square was built as part of a thorough public process which resulted in an intricate design with special features in detailing, lawns, trees, fixtures and furniture, and a fountain, for the purpose of providing a restful, passive space for the neighborhood and for the public generally; and

WHEREAS, an explicit goal of this public/private partnership is to have the reconstructed Square maintained at a higher than standard level; and

WHEREAS, to ensure that the Square will receive such high quality maintenance over the long term, the CSCC agreed to raise funds towards a maintenance endowment for the Square to cover above standard maintenance levels; and

WHEREAS, the Parties agree that it is appropriate to define the ongoing responsibilities for the maintenance of the Square;

NOW, THEREFORE, the Parties agree as follows:

II. Responsibilities of the City of Boston

A. The Parks Department

The Parks Department, acting through and for the Boston Parks and Recreation Commission, subject to the availability of annual appropriation therefor, shall have the following responsibilities:

1. To provide standard services to the Square in a manner equivalent to services it provides for all other city parks under its control and management. Such services are described in Attachment A, a memorandum describing the organizational structure of the Boston Parks and Recreation Department as it relates to the Square, which memorandum is incorporated herein by reference. Services which are provided through the provision of standard maintenance include, without limitation, the following:
 - a. Daily services including at least one pick up of litter including the emptying trash barrels; watering of grass, trees, and flowers as needed; removal of snow as needed (including sidewalks); and problem inspection of flower beds, graffiti (if any), fountain, vault area, and fixtures and furnishings and reporting of same to the regional superintendent for corrective action, which corrective action shall be taken as reasonable and appropriate.
 - b. Weekly services including mowing lawns; tending flower beds in season; and raking.
 - c. Quarterly services including assistance in planting one summer flower planting; basic care of the trees and shrubs; the steam cleaning of paved surfaces.
 - d. Yearly services including one bulb planting; tree and shrub feeding and pruning as required; turf feeding and maintenance; replacement of trees and shrubs as necessary, subject to the availability of funds; installation and removal of farmer's market tents; and other one time annual assistance for programmed events.
2. Upon the signing of this Agreement, for the express purpose of allowing the CSCC to use part of the income of the present Endowment (as defined in Paragraph IV.2) to raise the total endowment to \$1,500,000 (or income equivalent thereof) and only on an interim basis until income from the Endowment is sufficient to engage a contractor or contractors to perform such services in

accordance with Paragraph IV.3 and only to the extent that income from the Endowment (or such portion thereof as is made available for such purposes in accordance with Paragraph IV.3) is not sufficient to engage such contractor or contractors:

- a. To engage and supervise a qualified party to operate, clean, maintain, and repair the fountain located in the Square (including associated equipment such as the heating and ventilation system, dehumidifiers, sumps, sinks and power distribution system) (the "Fountain"), as necessary to keep the Fountain in good working order and repair, exclusive of those services to be performed directly by the Parks Department in accordance with subparagraph b. below ("Fountain Services").
 - b. To provide manual labor to clean and maintain the daily needs of the Fountain. Such duties include the frequent cleaning of the Fountain above ground basins and drains and the three or four time daily cleaning of the catch basins and drains in the vault area.
 - c. To provide manual labor to clean and maintain the irrigation system, exclusive of repairs, beyond the expertise of the Parks Department or requiring outside contractual services ("Irrigation Services").
3. To provide the Maintenance Committee of the Copley Square Charitable Trust (the "Trust") to be established by the CSCC in accordance with Paragraph IV.1 hereof, with information regarding the Parks Department's ability to perform the services as outlined above as soon as possible after the passage of the city budget by the City Council each year, and to provide the Maintenance Committee with the information provided to the Commissioner of Parks and Recreation by the Public Works Department pursuant to Paragraph II.'B.2 hereof.

B. The Public Works Department

The Public Works Department, subject to the availability of annual appropriations therefor, shall have the following responsibilities:

1. To provide services to the Square in a manner equivalent to the services which it provides in all other city owned parks under the control and management of the Parks Department. Such services shall include, without limitation, the timely replacement of lights in the Square (including street lights and park lights, but excluding holiday lights), and the maintenance and repair thereof; provided that any lights which are not standard issue will be supplied to the Public Works Department by the Parks Department or the Trust.
2. To provide the Commissioner of Parks and Recreation with information as to the Public Work's Department's ability to perform the services as outlined above as soon as possible after the passage of the city budget by the City Council each year.

III. Responsibility of the BRA

The BRA shall have the following responsibilities:

1. To provide one summer flower planting annually on or about May 15 in all beds in the Square.
2. To prepare and make available to the Parks Department as soon as is practicable a comprehensive operation and maintenance manual for the Fountain.

IV. Responsibilities of the CSCC and the Trust

The CSCC shall have the following responsibilities:

1. To establish the Trust, the purpose, organization and regulations of which shall be set forth in a Declaration of Trust (the form of which is attached hereto as Exhibit B and incorporated by reference) (the "Declaration of Trust").
2. To raise or to cause the Trust to raise funds toward an endowment of up to \$1,500,000 which shall be placed in and remain in the Trust for the purpose of funding the annual extraordinary maintenance cost of the Square, or to seek to otherwise obtain financial commitments resulting in total available resources with an income equivalent of \$1,500,000. (the "Endowment").

3. To cause the Trust to establish a Maintenance Committee (the "Maintenance Committee") in accordance with the Declaration of Trust of the Trust, chaired by the Commissioner of Parks and Recreation (or his or her designee), to determine (subject to approval of the Trustees of the Trust) how income earned on the Endowment shall be expended on an annual basis; provided however, that until such time as the Endowment contains a principal balance of \$1,500,000, the Trust, at its sole discretion, may allow up to 50% of the income from the Trust to return to and build the capital funds of the Trust.
4. It is recognized by all Parties to this agreement that the first priority need for extraordinary maintenance is the fountain, which includes the need for contracted professional engineering services and daily manual cleaning. The second priority need for extraordinary maintenance is the irrigation system. The Maintenance Committee shall be instructed to consider these priorities in its deliberations regarding expenditure of income from the Endowment. The third priority need is for extraordinary maintenance supplementing the standard maintenance services at the Square. Notwithstanding the foregoing, however, it is recognized that the Maintenance Committee needs and priorities for the Square may change as a result of changing circumstances and fundraising is a priority in any year in order to accumulate additional principal to adequately meet future maintenance needs at the Square. The Trust shall provide its Maintenance Committee with the annual projection of income as soon as it is known.
5. To install bricks and a granite circle in recognition of donors who made a significant contribution to the Square in the manner previously agreed by the CSCC, the Parks Department and the BRA.

V. Statement of Cooperation

The Parties agree to cooperate in an effort to ensure that the Square is well-maintained and appropriately used. The Parties shall keep each other informed of decisions made which will affect the Square.

VI. Regulations of Vendors and Special Uses at Copley Square

It is the responsibility of the Parks Department to establish and enforce the regulations for the use of the Square. Groups and individuals seeking special use of the Square must obtain a permit. It is expected that the Parks Department will grant permits to groups and individuals seeking special uses for the Square based on the compatibility of such special uses with the Square's general purpose of providing a restful, passive space for the neighborhood and for the public generally. All permits are issued on a first come, first served basis but efforts will be made by the Parks Department to coordinate and cooperate with community based programming and horticulture committees, including those of the CSCC.

VII. Ownership of Property

It is understood by and between the Parties that the Square is a City-owned park. Any improvements made to the Square, whether by the Trust, by a contractor engaged by the Trust (a "contractor"), or by any subcontractor of such a contractor (a "subcontractor"), including, but not limited to, plantings, benches, fountains, sculptures, monuments, and brick or other pavements, shall become the property of the City of Boston upon completion of the installation of the improvement; provided, however, that no work may be undertaken by or on behalf of the Trust in the Square unless the following requirements (the "Requirements") are satisfied:

1. Any contractor engaged by the Trust to undertake work in the Square must carry public liability and property damage insurance as well as worker's compensation insurance, and the City must be named as an additional insured or a co-insured on each such public liability and property damage insurance policy.
2. The Parks Department must approve all contracts for work to be undertaken in the Square prior to the commencement of such work and must approve all specifications therefor, such approvals not to be unreasonably withheld and approval or disapproval to be given within fourteen (14) days of notice from the Trust to the Parks Department of a proposed contract, which notice shall be accompanied by a copy of the proposed contract; provided, however, that if authorization of said work is not within the sole jurisdiction of the Parks Department, the Parks Department shall so notify the Trust within said fourteen (14) day period and the time period hereunder shall be extended as is reasonably necessary to obtain all other necessary approvals.

3. The Trust shall not make final payment on a contract for work undertaken in the Square without first notifying the Parks Department that such work has been completed and receiving the Parks Department's approval to make such final payment, such approval not to be withheld unless the work has been completed in a manner inconsistent with the contract and specification for such work approved by the City in accordance with subparagraph 2 hereof and approval or disapproval to be given within fourteen (14) days of notice from the Trust to the Parks Department that the work has been completed and is ready for inspection by the Parks Department.
4. If the Parks Department disapproves final payment for work undertaken in the Square pursuant to subparagraph 3 hereof, the Trust, at no cost to the City, shall cause the work to be completed in a manner consistent with the contract for such work approved by the City in accordance with subparagraph 2 hereof, and final payment shall not be made without first notifying the Parks Department that the work has been complete in such manner and receiving the Parks Department's approval to make such final payment, such approval not to be withheld unless the work has been completed in a manner inconsistent with the contract and specifications for such work approved by the City in accordance with subparagraph 2 hereof and approval or disapproval to be given within fourteen (14) days of notice from the Trust to the Parks Department that the work has been completed in such manner and is ready for the Parks Department's inspection.
5. The Requirements of subparagraphs 3 and 4 hereof shall not apply to partial payments on a contract, or to payments made in connection with contracts for the routine maintenance of the Square, such as a contract for (i) the Fountain Services, (ii) the Irrigation System Services, (iii) other day-to-day maintenance of the Square, (iv) other periodic maintenance of the Square or improvements located in the Square, or (v) retention of a contractor or contractors to perform any of the foregoing services.

VIII. Amendment

This Agreement may be amended only by an Agreement in writing signed by all of the Parties.

IX. Severability

If any term or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. Such invalid, illegal or unenforceable provision shall be interpreted in such valid, legal and enforceable manner as to effectuate the intent of the Parties, and the Parties shall forthwith execute an amendment hereto to effectuate that intent.

X. Successors and Assigns

The terms and provision hereof shall be binding upon each of the Parties and their successors and assigns and shall inure to the benefit of each of the Parties and their successors and assigns.

XI. Key Officials

A. For the Committee:

Sandra L. Willett
Copley Square Centennial Committee
197 Clarendon Street
Boston, MA 02116
Tel: 536-2101

B. For the Parks Department:

Lawrence A. Dwyer
Commissioner of Parks and Recreation
Room 816, City Hall
Boston, MA. 02201
Tel: 725-4505

C. For the Public Works Department:

Joseph F. Casazza
Commissioner
Room 714, City Hall
Boston, MA. 02201
Tel: 725-4900

D. For the Authority:

Stephen Coyle
Director
Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201
Tel: 722-4300

E. For the Trust:

Russell A. Gaudreau, Jr., Esq.
Ropes & Gray
One International Place
Boston, MA. 02110
Tel: 951-7261

XII. Notices

All notices required or permitted to be given hereunder shall be in writing and delivered by hand, addressed in the case of each Party to the Key Official designated in Paragraph XI for such Party at the address specified in Paragraph XI for the Key Official, or in the case of any Party to such other party and address as shall be designated by written notice given by such Party to the other Parties in the manner specified herein. Copies of all notices given hereunder shall be simultaneously given to the Key Official for the Trust designated in Paragraph XI or to such other party and address as shall be designated by written notice given by the Trust to the Parties in the manner specified herein. Any such notice shall be deemed given when so delivered by hand.

XIII. Indemnification

A. Indemnification by the City

The City agrees to defend, indemnify and hold harmless the Committee, the Trust and the Trustees, and any agent of one or more of the Trustees, including any member of a committee established by the Trustees pursuant to the Declaration of Trust (the "Indemnified Parties" from and against any and all liabilities, losses, damages, costs, expenses, causes of action, suits, claims, demands or judgments of any nature which may arise in connection with the maintenance and management of the Square, or personal injury or property damage occasioned on or about the Square (collectively, the "Liabilities"). Notwithstanding the foregoing, the City shall not defend, indemnify and hold harmless and Indemnified Party from the Liabilities, to the extent the Liabilities (a) have been caused by the intentional act or willful misconduct of such Indemnified Party, or (b) have arisen out of matters subject to the Requirements set forth in Paragraph VIII hereof, when such Requirements have been violated by the Trust.

B. Indemnification by the Trust

The Declaration of Trust shall provide that the Trust agrees to indemnify and hold harmless the City from and against the Liabilities, to the extent the Liabilities (a) have been caused by the intentional act or willful misconduct of an Indemnified Party, or (b) have arisen out of matters subject to the Requirements, when such Requirements have been violated by the Trust; provided, however, that this indemnification shall be payable only out of income earned by the Endowment and shall not extend to the principal amount of the Endowment. For purposes hereof, accumulated income shall be considered principal until the Endowment achieves a principal balance of \$1,500,000 and thereafter shall not be considered principal.

EXECUTED as a sealed instrument as of the date first set forth above.

COPLEY SQUARE CENTENNIAL COMMITTEE

By:

Russell A. Gaudreau, Jr.
President

Approved as to form:

CITY OF BOSTON

Corporation Counsel

BOSTON PARKS AND RECREATION
DEPARTMENT

By:

Lawrence A. Dwyer
Commissioner

BOSTON PUBLIC WORKS DEPARTMENT

By:

Joseph Casazza
Commissioner

BOSTON REDEVELOPMENT AUTHORITY

By:

Stephen Coyle
Director

It is recommended that the Agreement be awarded to the additional work related to the fountain and pool reconstruction and the SPA pay Holterman Stone the retainage for the fountain construction previously held by the CSO.

DOC #5400 6
Noted ADOPTED
5/9/91

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY, AND
STEPHEN COYLE, DIRECTOR

FROM: PAUL REAVIS, ASSISTANT DIRECTOR FOR
ENGINEERING AND DESIGN SERVICES
KEVIN WALSH, DIRECTOR OF OPERATIONS
DAVID CARLSON, ACTING DEPUTY DIRECTOR FOR
ENGINEERING AND DESIGN SERVICES

SUBJECT: COPLEY SQUARE PARK
FOUNTAIN SUBCONTRACTOR DISPOSITION

SUMMARY: The fountain at Copley Square Park has been successfully reconstructed and was run until January 3, 1991; it is recommended that the Agreements with the various Subcontractors be amended to accommodate additional work required by field conditions encountered during the reconstruction and subsequent operation of the fountain. Further a Memorandum of Agreement between the Copley Square Centennial Committee, the Parks Department, the Public Works Department and the BRA outlining the future responsibilities for each agency be signed.

The BRA, by a vote of the Board on July 26, 1990, entered into direct agreements with the subcontractors required to effect the remedial fountain modifications in early August, and amended Fay, Spofford and Thorndike's consultant contract to provide supervision of actions required to bring the work to closure.

During the reconstruction, field conditions were encountered that required modification of waterproofing details and additional work by subcontractors beyond that estimated previously. Once the fountain itself was reconstructed, it was run continuously for a period of two months. A number of hitherto unknown operational difficulties were pinpointed and corrected by Fay, Spofford, and Thorndike, and the electrical and plumbing subcontractors. The schedule for running the fountain was extended twice: first, to meet the postponed date for the Copley Square Christmas Tree Lighting Ceremony, and later, to ensure its full operation during First Night.

It is recommended that the Agreements with the Fountain Subcontractors be amended to accommodate the additional costs related to the fountain and pool reconstruction and the BRA pay Moliterno Stone the retainage for the fountain construction previous held by the CSCC.

It is further recommended that direct payments be made to two subcontractors retained by Mahoney Construction Company for punchlist items: Epoxy Injection Systems, Inc. and R.E. Cameron Associates totaling \$4,35.00.

The BRA, the CSCC and the Parks Department staff have reduced the future responsibilities of the BRA at Copley Square to providing a maintenance manual for the fountain operation and the provision of Spring flower planting by the BRA. The maintenance manual has been completed and delivered to the Parks Department. The BRA staff is prepared to begin planting flowers on May 15. Signature of a memorandum substantially in the form attached is recommended.

Funds for the subcontractors and all completed remedial work have been provided from the project contingency fund held by the Copley Square Centennial Committee.

Appropriate votes follow:

VOTED: That the Executive Director is hereby authorized to execute Change Order No.1 to the Amendment to the Subcontract with Moliterno Stone Sales, Inc., increasing the payment amount by \$4,507.00 with no change in the contract time and further that the BRA pay Moliterno Stone \$33,201.00 in retainage for the fountain construction.

VOTED: That the Executive Director is hereby authorized to execute Change Order No.1 to the Amendment to the subcontract with Mass Bay Electrical Corp., increasing the payment amount by \$4,950.51 with no change in the contract time.

VOTED: That the Executive Director is hereby authorized to execute Change Order No.1 to the Amendment to the Subcontract with The Waterproofing Company, Inc., increasing the payment amount by \$8,858.73 with no change in the contract time.

VOTED: That the Executive Director is hereby authorized to execute Change Order No.1 to the Amendment to the Subcontract with Gonzalez Corporation, increasing the payment amount by \$10,291.10 with no change in the contract time.

VOTED: That the Director make direct payments to Epoxy Injection Systems, Inc. of \$1,350.00 and R.E. Cameron Associates of \$3,000.00 for punchlist items under the contract with John Mahoney Construction Company.

STANDARD REPORT

January 23, 1993

VOTED: That the Director be authorized to sign a Memorandum with the Copley Square Centennial Committee, the Parks Department, and the Public Works Department substantially in the form attached.

FOR MATHEMATICS

General Corp. 198,000

3,100

3,100 Extra work
51,000 New Total

Wash Bay Electric Corp.

3,100

3,100 Extra work
3,100 Extra work
20,000 New Total

Millard Stone Sales, Inc.

20,000

1,000 Extra work
2,000 Extra work
1,000 New Total

1,000 Extra work
1,000 Extra work
14,000 New Total

Totals

617,100

3,100 Extra work
617,100 New Total

FOUNTAIN REPAIR

January 23, 1991

BRA

Subcontractor

Direct Contract

Change Order #1

The Waterproofing Co. Inc.

\$35,910

6,440

42,350

\$ 8,859 Extra Work

51,209 New Total

Gonzalez Corporation

15,808

5,463 H2O Heater

4,828 Extra Work

26,099 New Total

Mass Bay Electric Corp.

3,180

1,579 H2O Heater

2,843 Extra Work

7,601 New Total

Moliterno Stone Sales, Inc.

50,000

1,075 Extra Work

3,432 Veneer

54,507 New Total

Totals

\$111,338

\$ 28,079 Extra Work

\$139,417 New Total

THE BOSTON REDEVELOPMENT AUTHORITY'S ACKNOWLEDGMENT OF THE
ENCLOSED CHECK SHALL BE DEEMED AN ACKNOWLEDGMENT OF AND AGREEMENT
TO ALL OF THE PROVISIONS OF THIS ORDER.

We understand that you will promptly disburse the entire sum
of \$139,417 in the particular amounts and in the particular
parties specified in the letter. Such disbursements shall
include, without limitation, a total of \$28,079 to be paid on
later than fifteen (15) days hereafter to Moliterno Stone Sales,
Inc. (consisting of the \$54,507 shown above for Moliterno Stone

BOARD OF DIRECTORS

Russell A. Gaudreau, Jr., President
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Stella M. Trafford
Robert J. Walsh

Phebe S. Goodman, Administrator



**COPLEY
SQUARE
CENTENNIAL
COMMITTEE**

May 2, 1991

Mr. Paul Reavis
Assistant Director for
 Engineering and Design
Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201

Re: Final Payment for Copley Square

Dear Mr. Reavis:

Enclosed please find a check in the amount of one hundred eighty-three thousand three hundred twenty-two dollars (\$183,322.00) to cover the following costs for the construction of Copley Square, as specified in your letter to Sandra Willett of the CSCC, dated April 12, 1991 (the "Letter"):

Remedial Fountain Repairs	\$139,416.00
Moliterno Stone	33,201.00
Sub-Contractors Direct Billing	4,350.00
BRA "Punch-List" Items	6,355.00
	<u>\$183,322.00</u>

**THE BOSTON REDEVELOPMENT AUTHORITY'S ACCEPTANCE OF THE
ENCLOSED CHECK SHALL BE DEEMED AN ACKNOWLEDGMENT OF AND AGREEMENT
TO ALL OF THE PROVISIONS OF THIS LETTER.**

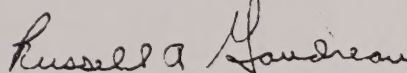
We understand that you will promptly disburse the entire sum of \$183,322 in the particular amounts and to the particular parties specified in the Letter. Such disbursements shall include, without limitation, a total of \$87,708 to be paid no later than fifteen (15) days hereafter to Moliterno Stone Sales, Inc. (consisting of the \$33,201 shown above for Moliterno Stone

and \$54,507 included within the total of \$139,416 shown above for Remedial Fountain Repairs).

As you know, this is the final obligation of the Copley Square Centennial Committee pursuant to the Fund Transfer Agreement between the Boston Redevelopment Authority, the City of Boston, acting by and through the Office of Capital Planning, the Edward Ingersoll Browne Fund and the Copley Square Centennial Committee, dated May 31, 1988. With the payment of the enclosed, all sums to be made available by the CSCC in accordance with such Agreement, including Contingency Funds, have been paid. In addition, you have agreed to indemnify and hold the Committee harmless against all claims by any of the contractors (including, without limitation, Clarke & Rapuano, John Mahoney Construction Company, Inc. and Moliterno Stone Sales, Inc.) involved in the design and construction of Copley Square, together with all costs (including, without limitation, reasonable attorneys fees) associated with such claims.

Please indicate your receipt of our check and your acknowledgment of and agreement to the foregoing by countersigning the enclosed copy of this letter and returning it to Phebe S. Goodman at the Copley Square Centennial Committee at the address set forth below. We appreciate all the efforts of the Boston Redevelopment Authority, including the remedial construction work, which you have undertaken to make the reconstruction of Copley Square a reality.

Sincerely yours,



Russell A. Gaudreau, Jr.
President

ACKNOWLEDGED AND AGREED this ___ day
of May, 1991:

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle, Director

COPLEY 50 CENTENNIAL COMMITTEE

PO BOX 111
BOSTON MA 02117-0111

1004

April 22, 1991 5-20

PAY TO THE
ORDER OF Boston Redevelopment Authority

\$183,322.00

One hundred eighty-three thousand three hundred twenty-two ~~XXXXXX~~
and 00/100 dollars

Fidelity Investments



PRESENT AT MUTUAL FUNDS DEPT.
SHAWMUT BANK, N.A.
BOSTON, MASSACHUSETTS

FOR final construction payment

Handwritten signature: Alexander Willett

⑆011000206⑆10594977850⑆01004

